

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CHINEDU ENIGWE,

Plaintiff,

v.

CLYDE GAINEY, et al.,

Defendants.

CIVIL ACTION

No. 10-684

MEMORANDUM

Chinedu Enigwe filed a complaint against Warden Clyde Gainey of the Curran-Fromhold Correctional Facility (“C.F.C.F.”) and Prime Care Medical, Inc., alleging that defendants infringed his civil rights in violation of 42 U.S.C. § 1983. Docket #3. On March 10, 2010, Enigwe filed an Amended Complaint that replaced Prime Care Medical Inc. with Prison Health Services (“PHS”) as a defendant. Docket #6.¹

According to the Amended Complaint, on March 1, 2008, Enigwe was arrested and spent ten days in the C.F.C.F. prison. During that time, Enigwe, an asthmatic, was denied access to his asthma pump and he consequently lived in fear of having an asthma attack. He also suffered difficulty breathing, nausea, weakness, and headaches. He

¹ Enigwe also filed a motion to add PHS as a defendant, which was granted by Magistrate Judge M. Faith Angell on April 15, 2010. Docket #15. On May 12, 2010, Enigwe consented to the dismissal of Prime Care Medical, Inc. as a party to this litigation. Docket #17.

alleges that his Eighth Amendment right was violated “because the medical staff knew, or should have known the imminent danger Plaintiff faced, but they recklessly disregarded it, with deliberate indifference to Plaintiff’s serious medical needs.” Amended Compl.

¶ 11. Enigwe further alleges that PHS is the medical provider to the C.F.C.F. inmates, and is responsible for supervising C.F.C.F. medical staff.

On July 12, 2010, PHS filed a 12(b)(6) motion to dismiss the Amended Complaint for failure to state a claim, arguing that (A) Enigwe failed to allege that PHS had any policy or custom that violated his constitutional rights and (B) Enigwe failed “to establish (1) that PHS was deliberately indifferent to [his] medical needs and (2) that [his] needs were serious.” Docket #19 at 6. In addition, on October 13, 2010, PHS filed a Motion to Dismiss for Lack of Prosecution. Docket #25.

Standard of Review

Federal Rule of Civil Procedure 8(a)(2) requires that pleadings contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” To decide whether to grant a Rule 12(b)(6) motion to dismiss for failure to state a claim, the court will consider “whether, under any reasonable reading of the pleadings, the plaintiff may be entitled to relief, and [the court] must accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom.” *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996). While the court always reviews these motions in the light most favorable to the non-moving party, the Supreme Court has also said that a pro se

complaint will be held “to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)); *Alson v. Parker*, 363 F.3d 229, 234 (3d Cir. 2004).

Monell Liability

“To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988). A private corporation, such as PHS, may be sued under § 1983 for actions taken under color of state law that deprive a prisoner of adequate medical care. *See Roach v. SCI Graterford Med. Dep’t*, 398 F.Supp.2d 379, 388 (E.D. Pa. 2005). Because PHS is a private corporation involved in the performance of governmental functions, the type of liability to which it may be subjected is limited. Specifically, Enigwe cannot hold PHS liable in *respondeat superior* (that is, based solely on the actions of its employees). *See Monell v. New York City Dep’t of Soc. Services*, 436 U.S. 658, 691 (1978). Instead, Enigwe must demonstrate that a PHS policy, practice, or custom was causally related to his ultimate constitutional injury. *See Woloszyn v. Cnty. of Lawrence*, 396 F.3d 314, 325 (3d Cir. 2005); *Roach*, 398 F.Supp.2d at 388.

“A custom ‘can be proven by showing that a given course of conduct, although not specifically endorsed or authorized by law, is so well-settled and permanent as virtually to constitute law.’” *Carter v. SCI Graterford Med. Dep’t*, 2004 WL 3019239, at *4 n.5

(quoting *Bielevicz v. Dubinon*, 915 F.2d 845, 850 (3d Cir. 1990). Where, as here, the allegations include a claimed failure to train employees, “liability under section 1983 requires a showing that the failure amounts to ‘deliberate indifference’ to the rights of persons with whom those employees will come into contact.” *Carter v. City of Philadelphia*, 181 F.3d 339, 357 (3d Cir. 1999).

Analysis

In his Amended Complaint, Enigwe states that “[t]he Prison Health Services, Inc., as the medical provider and supervisor to the medical staff at C.F.C.F., is responsible for exposing Plaintiff to the continued life threatening possibility of asthma attack that he feared he could suffer without his pump. The reckless disregard, and deliberate indifferent [sic] to Plaintiff’s serious medical need by the medical staff at C.F.C.F. must be attributed to Prison Health Services.” Amended Compl. ¶ 12. Not only does Enigwe fail to allege a practice or custom, or failure to train, but he seems to rely on *respondeat superior* liability, which is insufficient under § 1983.

The Supreme Court has instructed that a complaint that offers “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007). “[N]aked assertion[s]” without “further factual enhancement” are also insufficient. *Id.* at 557. Consequently, the court will grant the motion to dismiss for failure to state a claim upon which relief can be granted. However, because “a district court must permit a curative amendment, unless an

amendment would be inequitable or futile,” *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 236 (3d Cir. 2008) (citing *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002)), the court will grant Enigwe leave to amend the complaint.

Motion to Dismiss for Lack of Prosecution

In addition to the motion to dismiss for failure to state a claim, PHS has also moved to dismiss the complaint for lack of prosecution. Because the dismissal of Enigwe’s complaint under Rule 12(b)(6) is without prejudice, the motion to dismiss for lack of prosecution—under which the court could dismiss with prejudice—must also be addressed. PHS’s motion is premised on the fact that 1) Enigwe did not file a response to PHS’s motion to dismiss until three months after that motion was filed; and 2) Enigwe did not appear at the pre-trial conference set for September 29, 2010.

Under Federal Rule of Civil Procedure 41(b), the court may dismiss an action “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order.” Such a dismissal is a harsh sanction that is disfavored. *Nat’l Hockey League v. Metro. Hockey Club*, 427 U.S. 639, 643 (1976). When considering a motion for dismissal, the court must balance the following factors: “(1) the extent of the party’s responsibility; (2) the prejudice to the adversary caused by the party’s action or inaction; (3) a history of dilatoriness; (4) whether the conduct of the party was willful or in bad faith; (5) the effectiveness of alternate sanctions; and (6) the meritoriousness of the claim or defense.” *Poullis v. State Farm Fire and Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984).

Under the first factor, because Enigwe is a pro se plaintiff, he does bear responsibility for his conduct as a litigant. Thus, under limited circumstances, a pro se plaintiff's failure to meet deadlines can count in favor of dismissal. *See Emerson v. Thiel Coll.*, 296 F.3d 184, 191 (3d Cir. 2002). The second factor does not favor dismissal because PHS has failed to articulate any significant prejudice; PHS has only stated, in this regard, that "PHS has a right to have its case heard in a timely manner." The third factor does not favor dismissal because the two incidents complained of do not amount to a "history of dilatoriness." The fourth factor does not favor dismissal because there is no indication that Enigwe's oversights were in bad faith. The fifth factor may favor dismissal because, in the pro se context, alternative sanctions may be inadequate given that monetary sanctions, including attorney's fees, "would not be an effective alternative." *Emerson*, 296 F.3d at 191. The sixth factor is neutral: as discussed above, Enigwe has thus far failed to state a claim against PHS, but he has also been granted leave to amend.

Considering all of the *Pouley* factors, the court finds that the extreme sanction of dismissal is wholly unwarranted. In particular, the clear absence of bad faith on the part of Enigwe, as well as the absence of prejudice against PHS, counsels strongly against involuntary dismissal. Accordingly, PHS's motion to dismiss for lack of prosecution will be denied.

An appropriate order accompanies this memorandum.

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ORDER

AND NOW, this 6 day of April, 2011, it is hereby **ORDERED** that defendant Prison Health Services' Motion to Dismiss the Amended Complaint, dkt. 19, is **GRANTED**, and that Enigwe's complaint is **DISMISSED**, without prejudice, as to Prison Health Services. It is further **ORDERED** that defendant Prison Health Services' Motion to Dismiss for Lack of Prosecution, dkt. 25, is **DENIED**. The plaintiff may amend his complaint no later than 30 days from the date of this order.

/s/ Louis H. Pollak
Pollak, J.